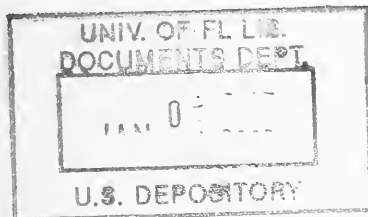


NATIONAL RECOVERY ADMINISTRATION

AMENDMENT TO
CODE OF FAIR COMPETITION
FOR THE
MOTION PICTURE INDUSTRY

AS APPROVED ON MARCH 11, 1935



UNITED STATES
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Approved Code No. 124—Amendment No. 4

AMENDMENT TO CODE OF FAIR COMPETITION

FOR THE

MOTION PICTURE INDUSTRY

As Approved on March 11, 1935

ORDER

APPROVING AMENDMENT OF CODE OF FAIR COMPETITION FOR THE MOTION PICTURE INDUSTRY

An application having been duly made pursuant to and in full compliance with the provisions of Title I of the National Industrial Recovery Act, approved June 16, 1933, for approval of amendments to the Code of Fair Competition for the Motion Picture Industry, which amendments are annexed hereto, and hearings having been duly held thereon, and the Deputy Administrator having rendered his report containing an analysis of the said amendments, together with his findings and recommendations with respect thereto, which said report, recommendations and findings are annexed hereto:

NOW, THEREFORE, on behalf of the President of the United States, the National Industrial Recovery Board, pursuant to authority vested in it by Executive Orders of the President, including Executive Order No. 6859, dated September 27, 1934, and otherwise, does hereby approve and adopt the said report, recommendations and findings, and does further find that said amendments and the Code as constituted, after being amended comply in all respects with the pertinent provisions and will promote the policy and purposes of said Title of said Act, and does hereby order that said annexed amendments be and they are hereby approved, and that the previous approval of said Code is hereby modified to include an approval of said Code in its entirety as amended.

NATIONAL INDUSTRIAL RECOVERY BOARD,
By W. A. HARRIMAN, *Administrative Officer.*

Approval recommended:

SOL A. ROSENBLATT,
Division Administrator.

WASHINGTON, D. C.,
March 11, 1935.

REPORT TO THE NATIONAL INDUSTRIAL RECOVERY BOARD

NATIONAL INDUSTRIAL RECOVERY BOARD,
National Recovery Administration,
Washington, D. C.

GENTLEMEN: This is a report on twelve proposed amendments to the Code of Fair Competition for the Motion Picture Industry. An application was duly made by the Code Authority on behalf of the Industry for approval of these amendments, and a public hearing was held on December 19, 1934, in the small ballroom of the Willard Hotel in Washington, D. C., after due notice of such hearing had been given. Every person who requested to be heard was given an opportunity to state his views in accordance with the requirements of the National Industrial Recovery Act.

Various portions of the Code are proposed to be amended and the amendments are accordingly treated separately herein.

I. The purpose of the amendment to Article I is to reduce the administrative difficulties. The number of members of the Industry in Hawaii and Puerto Rico is small, their problems are different from those in the Industry on the mainland and it is impracticable to administer the National Code there or form the Boards set up under the Code to settle the problems that arise. A proposed Code is under consideration in both Hawaii and Puerto Rico and the Industry in those territories is best qualified to formulate a Code particularly designed to meet their peculiar requirements rather than have the provisions of this Code applicable to them. The amendment complies in all respects with the pertinent provisions of Title I of the National Industrial Recovery Act and will tend to effectuate the policies thereof.

II. The purpose of the amendment adding Section 12 to Article IV, Division C, Part 1, is to deter attempts to frustrate the spirit and intent of the Code and the National Industrial Recovery Act. The Code, in certain of the labor provisions contained therein, prescribes maximum hours of employment and minimum rates of pay for the majority of the more than 300,000 employees of the Industry. Since the Code has been in effect, certain employers, in treating with employees covered by Article IV, Division C, Part 1, have devised plans with the intent to defeat these provisions of the Code. Exhibitors have in some cases contracted with third parties, for the services of theatre employees, for the definite purpose of avoiding payment of Code wages or being bound by Code hours since they do not come in under the definition of members of that Industry and are not bound by the provisions of any other Codes. The third party, or independent contractor, who agreed to furnish persons to perform the services, in many instances refused to comply with the Code and actually worked his employees more hours and paid them

less wages than provided in the Code. The amendment provides that Exhibitors who contract for such services in the future must require the contractor to agree in the contract to pay the wages and observe the hours set forth in the Code. This amendment affects approximately 75,000 employees engaged in this type of work, and will result in the employment of persons not now employed since additional persons will be required to perform services by reason of the curtailed working hours of those who are now performing such services without observance of Code provisions. The amendment will also add to the purchasing power of those employees who are now performing such services, since, in the majority of instances in which independent contractors have furnished the labor, less than Code wages have been paid as compensation. The amendment will also definitely tend to improve the standards of labor of this type of employee.

III. The purpose of the amendment to Article IV, Division C, Part 2, Section 1, is to make a deletion for clarification purposes only. This amendment does not constitute a substantive change since the Code specifically limits the definition of "Presentation and Vaudeville" to "Permanent and travelling companies of artists playing presentation and vaudeville houses", but the definition in the Code continues by providing that such presentation and vaudeville was not intended to include "rep shows, tab shows, tent shows, wagon shows, truck shows, medicine shows and show boats." No difficulties have arisen with regard to these excluded types of shows, nor is the amendment designed to include them within the Code at the present time. However, some presentation and vaudeville companies have adopted such names as "tab shows" or "show boats" and sought by such means to escape compliance with the Code. The employers of performers in these companies, who have sought by these means to defeat the purposes of the Code, are actually the "presentation and vaudeville companies" referred to and described in the Code provisions as they now exist. There is nowhere in existence specific definitions of the various terms used in describing the types of shows exempted from the Code provision except that the Code provision itself defines the terms "as these terms are understood in the theatre." The definition resulted in considerable confusion and subterfuge. The Code as constituted after being amended by the deletion of these words covers no group that was not adequately represented before approval of the Code, since "Presentation and Vaudeville" is still defined by the Code as "Permanent and travelling companies of artists playing presentation and vaudeville houses" and all such companies were intended to be covered by the Code and should be subject to it now. The amendment will improve the standards of labor of the employees in those shows in which the employer used one of the above mentioned terms to circumvent compliance with the Code, since the object in the use of such terms was to pay the employees less than the minimum wages and to require the performers to work more than the maximum hours provided in the Code. The amendment will also increase the purchasing power of the employees referred to above, and will tend to make necessary the employment of persons not now employed.

IV. The amendment to Article IV, Division C, Part 2, Section 3 (a), is for the purpose of more adequately providing compensation for principal performers in vaudeville and insuring to them a fair wage for rehearsal periods which extend beyond what is generally considered to be a reasonable time within which to perfect an act. The amendment provides for the payment to principals of one-half of the weekly wage of such principal for each week or part thereof that the rehearsal extends beyond two weeks. In numerous instances principals have been required to rehearse long or unreasonable periods, and this amendment is designed to provide compensation for such principals in such instances. It is difficult to estimate the amount of increased wages that will result from the approval of this amendment because efforts will be made by employers to perfect and book acts within the two weeks period. However, there will be increased wages in some instances that will increase the purchasing power of those principals who are required to rehearse more than two weeks and who have heretofore not been compensated for such period, and the amendment will also improve the standards of labor of these persons.

V. The amendment to Article IV, Division C, Part 2, Section 4 (a) (3), provides for the payment of \$7.50 net in cash per day to performers employed on a per diem basis for each theatre in which such performer appears. The original Code provision for which this amendment is proposed as a substitute provided for a \$7.50 per diem rate and was intended to accomplish the same result as the amendment, but it has been found that certain performers were thereafter required by their employers to play in more than one theatre in a single day and that the Code provision as worded was not sufficiently clear to indicate this intention of the original provision. In a subsequent provision of the Code, applicable to principals, it is provided that "Owing to the peculiar nature of the stage presentation and vaudeville business and the conditions prevailing therein, the changing nature of the entertainment" etc. "it is recognized that it is impossible to fix the maximum hours per week of artists appearing in such theatres." Since no maximum hours are fixed, the injustice, of permitting employers to require that principals appear in more than one theatre in one day and be compensated only the minimum rate, is apparent. The amendment will definitely improve the standards of labor of the performers who are not required to perform in more than one theatre and will increase the purchasing power of those performers who may, after approval of the amendment, be required to perform in more than one theatre in the same day and who have heretofore not been compensated for such extra services.

VI. The amendment to Article IV, Division C, Part 2, Section 4 (b), which deletes the last sentence in the first paragraph and inserts in lieu thereof the proposed amended provision, provides that no chorus person shall be required to report for work before 9 o'clock A. M. except on one day a week, on which day such a chorus person may be required to report at 8 A. M. The amendment provides, however, that such chorus person shall receive one and one-half times his regular rate of pay for the time worked before 9 A. M. The original Code provision for which this amendment is proposed as a substitute made no exception to the requirement that no chorus person be required to report before 9 A. M. The exception provided

for herein does not increase the maximum number of hours that a chorus person may be required to work but merely permits an employer to utilize the services of the employees at an hour earlier than 9 A. M. on one day a week, providing that wages of time and a half are paid to such employees for such period. The amendment is designed to provide adequate rehearsal time on the one day in a week on which the weekly show is changed and a new show is presented. The period of time between 9 A. M. and the opening hour has been found to be inadequate and the limitation of the Code provision has worked a hardship in some instances. The amendment will remove this condition but at the same time provide for adequate compensation for the additional service, and will increase the purchasing power of chorus persons performing in presentation and vaudeville houses, since numerous persons of the Industry have indicated approval of and intention to utilize the services of chorus persons during the period provided. This will necessitate the payment for such chorus person of the extra compensation provided for in the amendment.

VII. The amendment to Article IV, Division C, Part 2, Section 4 (b), which adds a paragraph immediately before subdivision 1 thereof, is an amendment to that portion of the Code which provides that a chorus person be released from work with pay one day out of every seven days. Lay-off periods were rare and uncertain before the adoption of the Code and the original Code provision coupled with this amendment will definitely improve the standards of labor for chorus persons. The amendment permits an employer the option of following the original Code provision or providing one full week's lay-off with pay for chorus persons after six consecutive weeks of employment. The amendment also provides that if a chorus person receives less than six weeks employment, such chorus person shall be paid on the basis of eight days pay for each seven days work. The testimony adduced at the hearing showed that the practical operation of the original Code provision has resulted in some inefficiency since if the show continued, as it does in most instances, for a period of seven days, it was necessary to release chorus persons on alternate days which disrupted the routine, the relative positions of the chorus persons in the show for that week and made daily changes of position necessary. The amendment will correct this situation in that a person now may be laid off during the course of a whole week's show without disrupting the routine of the show. A protection for chorus persons is provided in that if the employer has elected this manner of providing lay-off to employees and the employment lasts less than a period of six weeks, the chorus person receives compensation in the form of an extra day's pay for each week of employment during which no period of rest was provided.

VIII. The amendment to Article IV, Division C, Part 2, which deletes the present Section 4 (b) (6) and adds a new Section 4 (b) (6), provides that if a chorus person is laid off because of irregularity of bookings after the first two weeks of consecutive employment, such person may be laid off for a period of seven days in any six weeks period without pay. The amendment further provides that if additional lay-off is required, chorus person shall be paid for the period of such additional lay-off at the rate of \$3.00 per day as long as

the lay-off continues. The original Code provision provided for the payment of \$3.00 per day to chorus persons for each day of lay-off after the first two weeks of consecutive employment. It has been found, however, from the experience of the operation of this provision of the Code that short lay-offs from time to time are unavoidable and that an undue hardship is worked on the employer if he is required to pay the rates now specified in the Code for each day of lay-off. It has been found also that seven days in a six weeks period is a reasonable amount of lay-off for chorus persons and this amendment so provides. The testimony adduced at the hearing indicates that this amendment will more equitably provide for compensation with respect to lay-off periods.

IX. The amendment to Article IV, Division C, Part 2, which deletes the present Section 6 (b) and adds in lieu thereof a new Section 6 (b), provides that if an employer dispenses with the services of a chorus person, such chorus person shall be paid in cash the amount of the cost of his transportation, including sleeper and transportation of baggage, back to point of origin whether the chorus returns immediately or not. In a number of instances in the past, employers have taken a show and chorus on the road to different cities in the United States and if the show did not prove a success, it became the practice of employers, either because of insufficient finances or for other reasons, to dismiss the chorus persons on the road, and provide no arrangement for the transportation of such chorus person back to the point of origin. This practice frequently resulted in chorus persons being stranded without funds, sometimes great distances from their homes or point of possible reemployment. The original Code provision, for which this amendment is proposed as a substitution, was couched in vague language and it was deemed advisable to more explicitly require that the chorus person be provided with means to return to the point of origin. The amendment will definitely tend to correct and eliminate a relief problem that has, in the past, come about in communities in which such persons have been stranded and will improve the standards of labor of chorus persons.

X. The amendment to Article IV, Division C, Part 2, Sub-Section 6, adds a new paragraph to be known as Paragraph C, and for the purpose of clarity provides that if a chorus person terminates his or her contract, the employer is not required to provide transportation or sleeper back to the point of origin. The facts adduced at the hearing shows that this is a fair provision.

XI and XII. The amendment to Article VI, Part 1, Section 7 (b) and the amendment to Article VI, Part 2, Section 7 (c), provide a longer period of time within which the Code Authority may make its determination of appeals. These two amendments are administrative in nature and will facilitate the orderly processes of administering the Code by providing a more reasonable time for the Code Authority to examine into the merits and pass upon matters which have been determined by the various Boards set up under the Code.

I find in conclusion that all of the twelve amendments which are attached hereto were duly submitted by the Code Authority or assented to by that body in conformity with Article IX, Part 2, of the Code of Fair Competition for the Motion Picture Industry and that said amendments comply in all respects with the pertinent provisions

of Title I of the National Industrial Recovery Act, and that the amendments are well designed to promote and effectuate the policies set forth in Title I of the Act. The amendments and the Code as amended contain no provision designed to promote monopolistic practices or designed to either eliminate, oppress or discriminate against small enterprises. The effect of the amendments which may reasonably be anticipated is neither to remove nor increase restraints on competition and place no unreasonable burden upon either large or small enterprises. The amendments and the Code as amended will tend to induce and maintain united action of labor and management under adequate government supervision and will increase the opportunity for harmonious relations, and will tend to reduce or eliminate strikes and other forms of controversies between labor and management. The amendments and the Code as amended will tend to eliminate unfair competitive practices between members of the Industry, and will increase purchasing power and will tend to reduce and relieve unemployment.

I therefore recommend to the National Industrial Recovery Board the approval of the said amendments to the Code of Fair Competition for the Motion Picture Industry.

Respectfully,

WILLIAM P. FARNSWORTH,
Deputy Administrator.

Approved:

SOL A. ROSENBLATT,
Division Administrator.

WASHINGTON, D. C.,
March 4, 1935.

AMENDMENT TO CODE OF FAIR COMPETITION FOR THE MOTION PICTURE INDUSTRY

Amend Article I—Add the following new section to be known as Section 16 and to read as follows:

“This Code shall apply only to the Continental United States, and to the Territory of Alaska.”

Amend Article IV, Division C, Part 1—Add the following new section to be known as Section (12) and to read as follows:

“No exhibitor shall enter into any agreement, directly or indirectly, for services of a kind usually and customarily performed by theatre employees directly compensated by exhibitors unless such agreement provides that no person actually engaged in rendering such services shall be employed at a lower scale of wages or for a greater number of hours than provided for in this Code; provided, however, that this provision shall not apply if the agreement for services was entered into in writing prior to the effective date of this amendment.”

Amend Article IV, Division C, Part 2, Section 1 (a)—Delete the following:

“ * * * “rep” shows, “tab” shows, “tent” shows, “wagon” shows, “truck” shows, “medicine” shows, “show boats” * * * ”

Amend Article IV, Division C, Part 2—Delete the present Section 3 (a) and insert in lieu thereof the following new Section 3 (a):

“In the event that the rehearsal period for principals extends more than two (2) weeks, each principal required to rehearse shall be paid one-half of the weekly wage for such principal for each week or part thereof that the rehearsal extends beyond two (2) weeks.”

Amend Article IV, Division C, Part 2—Delete the present Section 4 (a) (3) and insert in lieu thereof the following new Section 4 (a) (3):

“The minimum wage of a performer employed on a ‘per diem’ basis and compensated in any manner shall be \$7.50 net in cash per day for each theatre in which such a performer appears.”

Amend Article IV, Division C, Part 2, Section 4 (b)—Delete the last sentence of the first paragraph and insert in lieu thereof the following:

“No chorus person shall be required to report at a theatre before nine o’clock A. M. except as hereinafter provided. A chorus person may be required to report at a theatre not earlier than eight o’clock A. M. on no more than one day in each week, provided such day is the day of opening of a new weekly program, and provided, further, that such chorus person shall be compensated for all such time prior to nine o’clock A. M. at not less than the rate of one and one-half times his regular hourly rate. In computing the amount to be paid as herein provided, the regular hourly rate at which such chorus person is employed shall be determined for this purpose by dividing the amount per week which he shall regularly be paid by forty.”

Amend Article IV, Division C, Part 2, Section 4 (b)—And the following paragraph immediately before sub-division (1) thereof:

“In the event the Exhibitor or independent contractor in any theatre which maintains a resident chorus under weekly contract so elects and notifies such chorus, then instead of the above-mentioned lay-off period which provides that the chorus be given one day off per week with pay, the chorus person may be given one full week’s lay-off with pay after six consecutive weeks of employment; provided, however, that if a chorus person working in a theatre operating under such policy receives less than six weeks’ employment, the chorus person shall be paid on a pro rata basis, which pro rata basis shall be computed upon a basis of eight days’ pay for each seven days’ work. Provided further, that when the chorus person is given one full week’s lay-off with pay after six consecutive weeks of employment the chorus person shall on request rehearse not more than ten hours during the week of lay-off, but shall not be requested to rehearse at all during the week prior to such lay-off.”

Amend Article IV, Division C, Part 2—Delete the present Section 4 (b) (6), and insert in lieu thereof the following new Section 4 (b) (6):

“If a lay-off is required because of irregularity of bookings after the first two (2) weeks of consecutive employment, a chorus person may be laid off without pay seven (7) days in any six (6) weeks’ period. Such lay-off may occur at any time after the first two weeks of consecutive employment. If additional lay-off is required, the chorus person shall be paid for the period of such additional lay-off at the rate of Three Dollars (\$3.00) per day as long as the lay-off continues.”

Amend Article IV, Division C, Part 2—Delete the present Section 6 (b) and insert in lieu thereof the following new Section 6 (b):

“If individual notice of contract termination is given by the employer, the chorus person shall be paid in cash the amount of the cost of his or her transportation (including sleeper and the cost of transportation of his or her baggage) back to the point of origin whether the chorus returns immediately or not.”

Amend Article IV, Division C, Part 2, Section 6—Add the following new paragraph to be known as Paragraph (c):

“If an individual notice of contract termination is given by the chorus person, the employer is not required to provide transportation or sleeper.”

Amend Article VI, Part 1, Section 7 (b)—Add after the word “Appeal” in the seventh line thereof, the following: “unless the Code Authority shall extend the time to render its decision, which extension shall in no event exceed thirty (30) days.”

Amend Article VI, Part 2, Section 7 (c)—Add the following: “unless the Code Authority shall extend the time to render its decision, which extension shall in no event exceed thirty (30) days.”









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